IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

DIANA WHITEHEAD,	§	
VERNON RAY WHITEHEAD, SR.	§	
JENNIFER LYNN HUGHES,	§	
AS NEXT FRIEND OF H.H.,	§	
A MINOR, AND KARLAN	§	
LEA JORGENSEN	§	**Civil Action No. 1:11-CV-107**
	§	
VS.	§	
	§	
ROBERT ARNOLD and THE CITY OF	§	
ORANGE, TEXAS	§	_____

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Diana Whitehead, Vernon Ray Whitehead, Sr., Jennifer Lynn Hughes, as next friend of H.H., a minor, and Karlan Lea Jorgensen, hereafter referred to as Plaintiffs, and file this Original Petition complaining of Robert Arnold and The City of Orange, Texas, hereinafter referred to as Defendants and for cause of action, would respectfully show unto the Court and Jury the following:

PARTIES

1. Plaintiff Diana Whitehead is a resident of Orange County, Texas.

2. Plaintiff Vernon Ray Whitehead, Sr., is resident of Harris County, Texas.

3. Plaintiff Jennifer Lynn Hughes is a resident of Hardin County, Texas. She is the mother and next friend of H.H., a minor, who is the surviving daughter of the James Whitehead, deceased.

4. Plaintiff Karlan Lea Jorgensen is a resident of Orange, Texas. She is the surviving

spouse of James Whitehead, deceased.

5. Defendant Robert Arnold is an individual who resides in Orange, Texas, who may be served at 3143 Timberlane, Orange, Texas 77632.

6. Defendant The City of Orange is a municipality who may be served by serving the Mayor, W. Brown Claybar, at Orange City Hall, 803 W. Green Avenue, Orange, Texas 77630.

JURISDICTION AND VENUE

7. The Court has jurisdiction under 28 U.S.C. § 1331 as the cause of action against defendants arises under the Constitution or laws of the United States.

8. Venue is proper in the Eastern District of Texas as the cause of action arose in Orange County, which is within the Beaumont Division of the Eastern District of Texas.

FACTS

9. On July 26, 2010, James Whitehead, a multi-decorated veteran and war hero, went to O'Reilly's Automotive to return an EGR valve. He was told when he purchased the part that he could return it for any reason. The clerk of the store refused to refund the purchase price for the valve and began arguing with Mr. Whitehead. The clerk called the police. They were on their way at 5:04 p.m. Robert Arnold, an off duty policeman decided to personally intervene, knowing the call would be promptly responded to. Although the police were only moments away, Robert Arnold aggressively confronted James Whitehead who was already in his car. Robert Arnold forced his way into the passenger side of the vehicle Mr. Whitehead was in, and killed James Whitehead in cold blood by 5:08 p.m., with an unauthorized pistol. He shot Mr. Whitehead in the chest, and the bullet tore through James Whitehead's right lung, went through his heart, and then went into the left lung leaving a

large wound tract. In disbelief, James Whitehead said to Robert Arnold “you shot me” to which Robert Arnold replied, “I sure did.” Mr. Whitehead was unarmed and posed no threat to any one. After the shooting, Captain Arnold unbelievably did what has been termed a “victory dance”, showing no remorse for this senseless killing.

10. Robert Arnold and the City of Orange attempted to cover up the wrongdoing that led to the murder of James Whitehead. In doing so, the City of Orange ratified Robert Arnold’s shooting of Mr. Whitehead.

11. James Whitehead was multi-decorated military veteran who was only 28 years old. He had served two tours of duty in Iraq. He had his whole life ahead of him, and would have earned in excess of $70,000 per year had Captain Arnold not killed him. He leaves behind his mother, Diana Whitehead, his father, Vernon Whitehead, his daughter, H.H., and his spouse, Karlan Lea Jorgensen, all of whom relied on him for support. He had a close relationship with his family, and as a result of his death the plaintiffs have suffered greatly. But for the shooting, James Whitehead would have provided love, comfort, support, services, advice and counsel to the plaintiffs.

VIOLATION OF CIVIL RIGHTS

12. The City of Orange is liable under 42 U.S.C. § 1983 for the deprivation of James Whitehead’s rights guaranteed under the United States Constitution, under color of law. At the time of the shooting, Robert Arnold was acting in the course and scope of his employment and acting under color of the laws and regulations of the State of Texas, City of Orange, and Orange Police Department. The Orange Police Department had a policy in place that enabled its agents and employees to act with deliberate indifference to the constitutional rights of individuals by tolerating misconduct of by its police officers,

encouraging misconduct by failing to adequately supervise, discipline or train its officer; and by policies that permitted hiring an officer with known record of violence.

13. The City of Orange and the Orange Police Department violated the Violence against Women Act by hiring Robert Arnold. The Violence against Women Act prohibits the ownership of guns by persons like Robert Arnold who have been convicted of misdemeanors of family violence.

14. The exercise of this established policy and custom violated James Whitehead's clearly established rights under the United States Constitution against the use of unreasonable, unnecessary, and excessive force.

15. The City of Orange had actual awareness that Robert Arnold was unfit to be a police officer and that he presented a grave danger to the citizens of the City of Orange. Before hiring Robert Arnold, he had been employed by the Department of Public safety, and his employment with the DPS ended when concerns arose over Robert Arnold's violent tendencies and domestic violence. In May, 2004, Robert Arnold's wife filed an application for an injunction enjoining violent behavior. In support of her application, she included an affidavit that stated: "My husband has a history of physical and verbal abuse directed toward me." The affidavit put the city on notice that Robert Arnold choked his wife, and then on May 6, 2004, he struck his wife in the face and knocked her to the ground. She stated "I do not believe that my children are safe in his presence when he engages in these outbursts of anger and uncontrolled temper" and that he has had a "pattern of domestic abuse".

16. Despite the public record of violent conduct, the City of Orange nevertheless decided to hire Robert Arnold as a police officer, after he promised he had his anger and

violence issues under control. Obviously, he continued to have serious issues with violence and anger. After he was hired by the City of Orange, the City investigated numerous instances of use of force by Robert Arnold. On at least three occasions, the Police Department of the City of Orange was put on notice of the exercise of excessive force by Robert Arnold. On or about June 13, 2007, Iris Tillman was assaulted by Robert Arnold without provocation or cause. Robert Arnold broke her nose in three places and chipped her tooth. Iris Tillman made a formal complaint to the Police Department, which was ignored. On August 2, 2009, a minor, C.B., had her face bloodied when she was punched the face by Robert Arnold without provocation or cause, knocking her back and to the ground and causing cuts to her face and mouth requiring medical, dental, and psychological care. C.B.'s mother made a formal written complaint to the Orange Police Department, and that complaint was also ignored. On December 25, 2007, Robert Arnold struck then 17 year old A.R., who was guilty of no more that using fireworks in the city limits, in the head with a metal flashlight, causing serious injury requiring twelve staples. An internal review by the City of Orange after shooting of James Whitehead revealed that Robert Arnold had the highest rate of use of force of any officer in the police department. Despite such knowledge, the City of Orange made a conscious decision to promote Robert Arnold to Captain, and chose to deliberately ignore his repeated use of excessive force and violent outbursts.

17. Robert Arnold's use of deadly force which was not necessary for the need was in reckless disregard for decedent's clearly established constitutional rights under the Fourth Amendment to the United States Constitution to be free from unreasonable seizures and excessive force.

18. Following the killing of James Whitehead, the Orange Police Department and City of Orange covered up and/or ignored evidence which shows the liability of Robert Arnold and the Orange Police Department for violations of James Whitehead's civil rights. The Orange Police Department failed to perform an adequate and proper ballistic examination and withheld physical and pathological evidence which would clearly show that James Whitehead was shot while sitting the passenger seat of a pickup truck. Sadly, the City of Orange re-wrote the event to create justification for an unwarranted shooting and death.

DAMAGES

19. As a proximate result of the incident made the basis of this suit and defendants' conduct, Diana Whitehead, brings this suit against the defendants to recover damages for the following items:

(1) pecuniary loss sustained in the past, and which in reasonable probability will be sustained in the future;

(2) loss of companionship and society sustained in the past, and which, in reasonable probability, will be sustained in the future;

(3) mental anguish sustained in the past, and which, in reasonable probability will be sustained in the future.

20. As a proximate result of the incident made the basis of this suit and defendants' conduct, Vernon Ray Whitehead, Sr. brings this suit against the defendants to recover damages for the following items:

(1) pecuniary loss sustained in the past, and which in reasonable probability will be sustained in the future;

(2) loss of companionship and society sustained in the past, and which, in reasonable probability, will be sustained in the future;

(3) mental anguish sustained in the past, and which, in reasonable probability will be sustained in the future.

21. As a proximate result of the incident made the basis of this suit and defendants' conduct, Jennifer Lynn Hughes brings this suit against the defendants in her capacity as mother, guardian, and next friend of H.H. to recover damages for the following items:

(1) pecuniary loss sustained in the past, and which in reasonable probability will be sustained in the future;

(2) loss of companionship and society sustained in the past, and which, in reasonable probability, will be sustained in the future;

(3) mental anguish sustained in the past, and which, in reasonable probability will be sustained in the future.

22. As a proximate result of the incident made the basis of this suit and defendants' conduct, Karlan Lea Jorgensen, brings this suit against the defendants to recover damages for the following items:

(1) pecuniary loss sustained in the past, and which in reasonable probability will be sustained in the future;

(2) loss of companionship and society sustained in the past, and which, in reasonable probability, will be sustained in the future;

(3) mental anguish sustained in the past, and which, in reasonable probability will be sustained in the future.

EXEMPLARY DAMAGES

23. Defendants' conduct was committed recklessly and with gross negligence, and therefore Plaintiffs are entitled to recover exemplary damages from all defendants.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the defendants be cited to appear and answer herein as the law directs, and that upon final hearing and trial by jury, plaintiff have and recover of and from the defendants, jointly and severally, their damages which are in excess of the minimum jurisdictional limits of this Court, together with costs of Court and pre-judgment and post-judgment interest, and that plaintiffs be entitled to such other and further relief, both at law and in equity, to which they may show themselves justly entitled.

Respectfully submitted,

/s/ Clay Dugas
CLAY DUGAS
TBA #06173200
MIKE JACOBELLIS
TBA # 10515100
CLAY DUGAS & ASSOCIATES
805 PARK STREET
BEAUMONT, TX 77701
(409) 813-1111
FAX: (409) 813-1396
ATTORNEYS FOR PLAINTIFF DIANA WHITEHEAD

/s/ David Dies
DAVID DIES
TBA#05850800
Dies & Parkhurst
1009 West Green Avenue
Orange, TX 77630
(409)883-0892
(409)670-0888 fax
ATTORNEY FOR VERNON RAY WHITEHEAD, SR.

/s/ B. Adam Terrell
B. ADAM TERRELL
TBA# 19790900
WELLER GREEN TOUPS & TERRELL
2615 Calder St # 400
Beaumont, TX 77702-1940
(409) 838-0101
(409)838-6780 fax

DUSTIN GALMOR
TBA#24057525
GALMOR & STOVALL
2626 Calder, Suite 104
Beaumont, Texas 77702
(409)832-7757
(888)248-9161 fax

ATTORNEYS FOE JENNIFER LYNN HUGHES, AS NEXT FRIEND OF H.H., A MINOR

/s/ Kevin Laine
KEVIN LAINE
TBA# 00798313
The Law Office of Kevin Lane
1104 Orleans Street
Beaumont, TX, 77701-3611
(409)838-4040
(409)832-7830 fax

CHRISTINE BROWN-ZETO
TBA# 03102200
1107 Green Avenue
Orange, TX 77630
(409)886-8558
(409)883-6523 fax

ATTORNEYS FOR KARLAN LEA JORGENSEN

PLAINTIFFS RESPECTFULLY REQUEST A TRIAL BY JURY